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# ***Tax Tips for The Dining & Beverage Industry***

***Sales and Use Taxes***

***November 1997***

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### **Some of Your Sales May Not Be Taxable**

Although food products sold by bars, restaurants, delis, and similar establishments are generally taxable, there are some food sales that are not subject to tax.

For information on nontaxable food product sales, please call our Information Center at 1-800-400-7115 and request a copy of Regulation 1603, *Taxable Sales of Food Products*. This regulation explains the availability of tax exemptions for the following:

- Student meals
- Sales of meals by religious organizations
- Meal and food sales by such institutions as hospitals
- Meal programs for low-income elderly persons
- Meals delivered to homebound elderly or disabled persons
- Meals and food products served to condominium residents

In addition, Regulation 1597, *Property Transferred or Sold by Certain Nonprofit Organizations*, and Publication 18, *Tax Tips for Nonprofit Organizations*, explain how tax applies to sales of food by nonprofit youth organizations and parent-teacher organizations.

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## CONTENTS

### Page

- 1 Restaurants, Bars, Delis,  
Ice Cream Parlors, and  
Similar Establishments**
- 5 Caterers**
- 7 Places Where Admission  
Is Charged**
- 8 Other Tax Issues**
  - Employee Meals*
  - Self-Consumed and*
  - Complimentary Meal and Drinks*
  - Items Sold with Meals*
  - Tips and Other Charges*
  - Two Meals for the Price of One*
  - Sales Tax Reimbursement*
  - Inventory Controls*
  - Record Keeping*
- 14 For More Information**
- 17 Appendix**
  - A Test for the 80/80 Rule*
- 19 Reader Survey**

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*Note: This pamphlet summarizes the law and applicable regulations in effect when the pamphlet was written, as noted on the cover. However, changes in the law or in regulations may have occurred since that time. If there is a conflict between the text in this pamphlet and the law, the law is controlling.*

## PREFACE

This pamphlet is designed to help you understand California's Sales and Use Tax Law as it applies to owners, managers, and operators of bars, taverns, cocktail lounges, restaurants, and similar businesses that sell meals or cocktail beverages or both.

If you have questions that are not answered in this booklet, please call our Information Center and talk to a customer service representative. See Chapter 5 for their telephone number and a list of other available resources.

This pamphlet complements another Board of Equalization publication, *Your California Seller's Permit*. That publication, which is provided to first-time applicants for seller's permits, includes general information about obtaining a permit; using a resale certificate; collecting and reporting sales and use taxes; buying, selling, or discontinuing a business; and keeping records. If you do not already have a copy of this booklet, please call our Information Center at 1-800-400-7115 and request one.

We welcome your suggestions for improving this or any other tax tip pamphlet. You may use the reader survey on page 19 to let us know what you think, or you may send your suggestions to:

Audit Evaluation and Planning Section  
State Board of Equalization  
450 N Street MIC 40  
PO Box 942879  
Sacramento CA 94279-0040

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# 1. RESTAURANTS, BARS, DELIS, ICE CREAM PARLORS, AND SIMILAR ESTABLISHMENTS

*This chapter includes information on the taxability of food and beverage sales in restaurants and similar establishments. If you would like information on the taxability of other types of sales, such as greeting cards, coffee mugs, promotional items, and so forth, please order publication 73, Your California Seller's Permit (see page 14).*

*You should also read chapter 4 for information on:*

- *Employee Meals*
- *Complimentary and Self-Consumed Meals and Drinks*
- *Tips and Other Charges*
- *Two Meals for the Price of One*
- *Items Sold with Meals*

## Do Your Sales Come Under the 80/80 Rule?

*See page 17 for specific information on how to test for the 80/80 rule.*

How you report taxes will depend on whether you come under what is called the 80/80 rule. You come under this rule if

- More than 80% of your business's gross receipts are from the sale of food products (*note: alcoholic and carbonated beverages, while taxable, are not considered food products*); **and**
- More than 80% of your retail food product sales are taxable because they constitute
  - Sales of food products that you furnish, prepare, or serve for consumption at your place of business (see page 2 for an explanation of "place of business");
  - Sales of meals or hot prepared food products (see page 3 for an explanation of hot prepared food products);
  - Sales of food products by a "drive-in" (food products ordinarily sold for immediate consumption at or near a location at which parking facilities are provided primarily for the use of patrons in consuming the products, even though they may be sold to go).

If you come under the 80/80 rule, you are required to report tax on nearly all food and beverage sales (unless you make the special election described on page 2).

It is especially important to test for the 80/80 rule if you have just acquired a food service business or started a new food service business. You should also test for the 80/80 rule if you have recently changed the product mix in an ongoing business (for example, are you now selling more hot prepared food products?) or if you change how you serve food (for example, do you provide extra seating outside in good weather, thereby increasing the percentage of food served for consumption at your place of business?).

*Note:* If you own multiple locations, each location must be considered separately (combination locations such as restaurant-bakeries may be treated differently, see page 17 for more information).

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### **How To Report Tax Under the 80/80 Rule**

#### **Place of business**

You are considered to have a place of business “where customers may consume their purchases” if you provide tables and chairs or counters for dining, or provide trays, glasses, dishes, or other tableware. You are also considered to have a place of business “where customers may consume their purchases” if you are located in a shopping mall and are near dining facilities provided by the mall (for example, you are located in or near a food court or near an area where tables and chairs are provided for dining).

If your business comes under the 80/80 rule, you must report tax on all food product and beverage sales — except as described below:

- Do not report tax on sales of cold food products if they are sold in a form that is not suitable for consumption on the premises. A cold food product is not “suitable for consumption on the premises” if it requires further processing by the customer, or is sold in a size not ordinarily consumed by one person. For example, a frozen pizza would not be taxable because it requires further processing by the customer. And the sale of a quart of milk, a quart of ice cream, or a whole pie would not be taxable because those amounts would not ordinarily be consumed by one person. Additional examples can be found in Regulation 1603, *Taxable Sales of Food Products*.
- Do not report tax on exempt food sales, such as sales to the U.S. Government or sales for resale.

#### **Special Election — “To Go” Sales**

Effective April 1, 1996, you can elect *not* to report tax on “to go” sales of cold food products, hot beverages, and hot bakery goods. However, those sales must be separately accounted for and substantiated by supporting documents, such as cash register tapes. Without adequate documentation, you are required to report tax on such sales. See page 3, “Food Sold To Go” for a discussion of how to apply tax.

### **How To Report Tax If Your Sales Do Not Come Under the 80/80 Rule**

#### **Food Sold for Consumption at Your Place of Business**

Tax generally applies to sales of food and edible nonfood products sold for consumption at your place of business (see above for an explanation of *place of business*). Edible nonfood products include carbonated and alcoholic drinks.

It does not matter whether a food product or beverage is sold à la carte or as part of a meal. If it is sold for consumption at your place of business, it is generally subject to tax. (A meal is a combination of food products, or a combination of food products and edible nonfood products, sold for a single price.)

## **Food Sold To Go**

*Note: The following information also applies to businesses that come under the 80/80 rule if they have made the "Special Election" described on page 2.*

### **Items sold à la carte (see page 4 for combination packages)**

#### **◆ Beverages**

The following beverages are always taxable:

- Carbonated beverages (such as soda or sparkling water)
- Alcoholic beverages

The following beverages are not taxable when sold for a separate price to go:

- Hot beverages (such as coffee, hot tea, lattes, mochas, and hot chocolate)
- Noncarbonated beverages (such as fruit drinks, milk, and iced tea)

*Note:* Hot soup, bouillon, and consommé are taxable. They are considered hot prepared food products (see below).

#### **◆ Cold food products (other than beverages)**

A cold food product sold individually and to go is not taxable. A cold food product sold as part of a combination package may be taxable (see next page).

Examples of cold food products include cold sandwiches, milkshakes, fruit smoothies, ice cream, cold salads, cold bakery items, and so forth.

*Example.* If you sell an egg salad sandwich to go, you are not liable for tax on the sale. However, if you sell an egg salad sandwich as part of a combination package, you may be liable for tax (see next page).

#### **◆ Hot prepared food products (other than beverages)**

"To go" sales of hot prepared food products are taxable (see exception below for hot bakery items).

A food product is considered a hot food product if it is heated to a temperature above room temperature (for example, grilling a sandwich, dipping a sandwich in hot gravy, or using infrared lights, steam tables, or microwave ovens). Examples of hot prepared food products include hot sandwiches, pizza, barbecued chicken, soup, consommé, bouillon, steak, and so forth.

Hot food is considered taxable even if it has cooled by the time of sale since it was intended to be sold as a hot food.

If your customer buys a cold food product to go and heats the food product in a microwave oven that is accessible to the public, the sale is not taxable. It is considered a sale of a cold food product to go.

*Exception:* Hot bakery goods are not taxable when sold to go, unless they are sold as part of a combination package (see next page).

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**Food Sold To Go:**  
*Combination  
Packages*

◆ **Combination packages**

Combination packages are two or more items sold together for a single price (not sold individually).

A combination package is taxable if it includes any of the following items:

- A hot prepared food (such as a hot sandwich or hot bakery item)
- A hot beverage (such as coffee or hot chocolate)
- A carbonated beverage (such as a soda or sparkling water)
- An alcoholic beverage

*Examples.* You are selling a combination of hot coffee and a doughnut for a single price of \$1.50, or a combination hot pastrami sandwich and soda for \$4.50. Because each package includes one of the items listed above and is sold for a single price, both packages are taxable.

If a combination package sold to go does not include one of the items listed above, it is not taxable (for example a cold sandwich and milk sold together for a single price would not be taxable).

*Exception.* If you sell a combination of cold food products in an individual *returnable* container from which the individual serving is intended to be eaten, the sale is subject to tax. In this instance, the sale is considered a sale of a served meal, which is generally taxable.

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## 2. CATERERS

### Introduction

This chapter includes information on the taxability of food and beverage sales made by caterers. If you cannot find an answer to your questions in this chapter, please contact one of the Board offices listed on page 16. You should also read chapter 4 for information on employee meals; complimentary and self-consumed meals and drinks; and tips and other charges.

See also page 6, "Other Considerations" for information on sales for resale, sales to the U.S. Government, and meals served at a school cafeteria.

### Caterer Defined

Under the Sales and Use Tax Law, you are considered a caterer if you serve meals, food, and drinks on the premises of your customers. You are considered a food seller and not a caterer for tax purposes if you sell food to go or if you merely deliver food (that is, you do not use your employees or your own dishes, flatware, and so forth, to serve food). See pages 3 and 4 for information on the taxability of such sales.

### Application of Tax

The following information applies to typical charges for preparing and catering food and drinks. If you have additional questions, please call our Information Center at 1-800-400-7115.

#### ◆ Food and drinks

Charges for food and drinks are taxable.

#### ◆ Serviceware, tables, and so forth

Charges for the use of dishes, silverware, glasses, tables, and other items used in connection with preparing and serving meals are taxable. You are considered to be using them in connection with the sale of the meal, rather than renting them or selling them to your customer. As a result, you cannot issue a resale certificate to purchase or rent such items.

#### ◆ Labor charges and preparation charges

Charges for serving and preparation, whether performed by you, an employee, or a subcontractor, are taxable. Tax applies to even if you do not provide the food and drinks.

#### ◆ Facility charges

Charges for the rental of a facility in which you serve food are taxable.

#### ◆ Dance floors, stage equipment, and so forth

If you have paid sales or use tax on the purchase or rental of a dance floor, podium, sound/video system, or other equipment not customarily provided in connection with the preparation and



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furnishing of food, tax does not generally apply to the rental of such property to your customers. However, if you did not pay tax to your supplier when you purchased or rented the property, the rental charges to your customer are taxable.

◆ **Parking attendants, security guards, entertainment**

Charges for the above personnel are not subject to tax, provided those persons do not also participate in the service of food and drinks.

**Other  
Considerations**

**Sales for resale.** Tax does not apply if you prepare or serve food, meals, or drinks to a buyer who will sell those items at retail and report tax on their sale. In such instances, the buyer should provide you with a valid resale certificate.

**Sales to the U.S. Government.** Sales to the U.S. government are exempt from tax.

**Meals served at a school cafeteria.** If you are hired by a student organization to sell meals and other food products to students at a school cafeteria, your sales are taxable because you are selling the food products directly to the students and not to the student organization for resale to the students.

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### 3. PLACES WHERE ADMISSION IS CHARGED

*This chapter includes information on the taxability of food and beverage sales in places where admission is charged. If you cannot find an answer to your questions in this chapter, please contact our Information Center listed on page 14. You should also read chapter 4 for information on employee meals; complimentary and self-consumed meals and drinks; and tips and other charges.*

#### **Taxability of Food and Beverage Sales**

In general, tax applies to food products that are sold within a place where admission is charged and the food is for consumption at that place. Places where admission is charged include sports and music events, swap meets, trade shows, and so forth.

There are some exceptions where tax may not apply to sales made within a place where admission is charged. Those exceptions include, but are not limited to, the following:

- *Sales made by qualified nonprofit youth organizations or nonprofit parent-teacher organizations.* Such organizations should refer to Pamphlet 18: *Tax Tips for Nonprofit Organizations* for more information.
- *Cold food products sold in a form not suitable for consumption on the premises.* A cold food product is not “suitable for consumption on the premises” if it requires further processing by the customer, or is sold in a size not ordinarily consumed by one person. For example, a frozen pizza would not be taxable because it requires further processing by the customer. And the sale of a quart of milk, a quart of ice cream, or a whole pie would not be taxable because those amounts would not ordinarily be consumed by one person. Additional examples can be found in Regulation 1603, *Taxable Sales of Food Products*.

#### ***Places Where Admission is Charged — A Closer Look***

There are instances where sales are made in places that do not qualify as places where admission is charged. In those instances, some food sales will be taxable, while others will not. Because of the variety of rules that apply, you should contact our Information Center for advice regarding the taxability of your sales (1-800-400-7115).

Examples of places that do not qualify as places where admission is charged include the following: national and state parks, campgrounds, and recreational vehicle parks. The following also do not qualify: places where admission is based on membership dues or the use of a student body card and places where no entrance charge is made for spectators (such as golf courses and bowling alleys).

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## 4. OTHER TAX ISSUES

### Employee Meals

If you furnish meals to individual employees and if you charge a *specific price* for those meals, the meal charges are taxable and must be reported on your sales and use tax return.

A *specific charge* is considered to have been made if one or more of the following conditions exist:

- The employee pays cash for meals consumed
- The value of the meals is deducted from the employee's paycheck
- The employee receives meals in lieu of cash to bring compensation up to legal minimum wage
- The employee has the option to receive cash for meals not consumed

There is no specific charge when a value is placed on the meals solely for payroll tax purposes for employees receiving the minimum wage or more.

### Self-Consumed and Complimentary Meals and Drinks

If you consume or give away meals or nontaxable drinks (such as milk and tea), you are not required to pay tax on those items. However, if you consume or give away carbonated or alcoholic beverages (such as sodas or beer) that you purchased without payment of tax, you must pay use tax based on their cost (the amount you paid for the items).

For example, if you purchased sodas with a resale certificate and did not resell them but gave them to a customer or employee, you would owe use tax based on the cost of the sodas. To pay use tax, you report the cost of the taxable items under "Purchases Subject to Use Tax" on your tax return.

Use tax is applicable when you purchase taxable merchandise without paying tax and then use it for a purpose other than for resale. You may have purchased an item without payment of tax because you used a resale certificate or you made the purchase from an out-of-state retailer who did not collect tax.

There are some instances where the donation of taxable items would not be subject to use tax. For example, donations of taxable items to certain charitable organizations are considered to be exempt from tax. For more information on exempt charitable organizations, please contact our Information Center at 1-800-400-7115.

A record keeping system similar to that described for complimentary meals or drinks (see page 12) will prove satisfactory in most cases when recording owner or employee self-consumed merchandise.

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## **Items Sold with Meals**

In general, you are considered the retailer of paper plates, toothpicks, disposable “to go” containers, straws, plastic utensils, paper napkins, and similar items that are not of a reusable character which you furnish with the foods and beverages you sell (these items are considered to be included in the price for the food or beverage). Consequently, you can issue a resale certificate to purchase those materials.

## **Tips and Other Charges**

### *Tips*

Tips are not taxable if they are paid by customers on an entirely voluntary basis and are retained by employees. Tips received by your employees directly from customers at the end of a meal without any prearrangement are considered voluntary.

Mandatory or required tips, on the other hand, are taxable. Examples of mandatory payments of tips are written statements on menus, brochures, or advertisements that tips will be added to meal prices. In the case of banquets, any gratuities that are agreed to in advance are considered required, not voluntary, and as a result are subject to tax. For example, if your standard banquet agreement states “the suggested gratuity is 15%” and prior to the event, your customer agrees to this amount, the gratuity is taxable.

### *Service Charges*

Service charges added to the price of meals instead of, or in addition to, tips are a part of the selling price of the meals and must be reported as taxable, even though they may be paid over to employees.

### *Cover Charges*

Cover charges that customers may recoup in food and beverages are taxable (whether or not the customer recoups those charges). On the other hand, separate charges solely for admission or for a ticket to a place furnishing entertainment are not subject to tax.

### *Rental Charges*

Often separately stated charges are made for the rental of room facilities in connection with sales of meals. Such charges are taxable when payment for the use of the facility is required or is a necessary part of the meal service.

### *Charges for Opening and Serving Customer-Furnished Beverages*

These opening and serving charges are taxable.

## **Two Meals for the Price of One**

If you accept two-for-one coupons or other discount coupons or cards that allow customers to purchase food or beverages at a reduced price, your tax liability is based on the amount you receive for the sale.

### *Examples*

You serve two \$12 meals for the price of one under a dine-out plan

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and charge your customer a total of \$12 for both meals. Tax applies to the \$12 total (before optional tip).

You serve a \$15 meal and an \$11 meal, and your customer gives you a coupon which indicates the cheaper of the two meals is free. You charge your customer \$15 for the two meals. Tax applies to the \$15 (before optional tip).

Your customer uses a dine-out plan that entitles the holder to receive a 50% percent discount off the regular meal price, with a maximum discount of \$4. Your customer orders a \$10 meal and you reduce the price by \$4. Tax applies to the \$6 charged for the meal (before optional tip).

*Note:* If a dine-out plan provides for any reimbursement from the promoter, that amount is subject to tax and must be included as part of total sales on your sales and use tax return. If, in the first example, you receive \$2 from the promotion agency for a redeemed coupon, sales tax would apply to \$14 — the total of \$12 received from the customer plus \$2 received from the promotion agency.

## **Sales Tax Reimbursement**

Although you are liable for paying the sales tax on your taxable retail sales, the law provides that you can be reimbursed by your customers for the tax. You can be reimbursed under one of the following conditions:

- In printed material directed to the purchasers (such as a menu or advertisement) a notice is included to the effect that reimbursement for sales tax will be added to the sales price of all items or certain items, whichever is applicable
- Sales tax reimbursement is shown on the sales check or other proof of sale
- The agreement of sale expressly provides for such addition of sales tax reimbursement
- You post on the premises, in a location visible to purchasers, the amount of tax

### ***Sign Posting Requirements***

Some bar operators include sales tax in the price of drinks sold and consumed at the bar, but add tax as a separately stated amount when the waiter serves the drink at a table or elsewhere in the premises.

If you sell drinks at a tax-included price throughout the premises, including bar, cocktail lounge, and dining room and want to claim a deduction for sales tax included, the Board will consider that sales tax is included in the total selling price if you post a notice on your premises that reads substantially as follows:

*All prices of taxable items include sales tax reimbursement computed to the nearest mill.*

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If you desire to sell drinks at a tax-included price at the bar and in the cocktail lounge only, or at the bar only, a sign similar to that above, and indicating the areas to which the sign applies, should be prominently displayed in the areas in which the drinks are served.

If you want to add tax separately to the price of drinks served by a waiter at a table or elsewhere, a statement should be included on the menu, or placed on the tables, reading substantially as follows:

*Sales tax will be added to the price of all food and beverage items served.*

When the same type of drink is sold at both tax-included and tax-added prices as described above, a strict and accurate segregation should be made of sales under each tax reimbursement method.

### ***Collection of Too Much Tax***

If you collect more than the required amount of tax for a sale, the excess amount must be returned to the purchaser or paid to the state.

## **Inventory Controls**

It is recommended that tavern and restaurant owners pay special attention to inventory controls. In a highly competitive environment, lax handling of inventories can mean the difference between success or failure for a business. And, of course, good inventory controls minimize the possibility of additional tax assessments.

As a business operator, you must be able to account for merchandise that you have purchased for resale to your customers. You should ensure that your records of purchases for resale are accurate and complete and do not include supplies or other items not for resale.

To prevent losses that cannot be accounted for, you should also maintain inventory controls from the time goods are purchased until they are sold or used.

### ***Inventory Controls — Bar Operators***

Some methods used by successful operators for proper inventory control include the following:

- All deliveries are checked in, and the manager is present while delivery is being made.
- The bulk of liquor purchases are stored in a locked storeroom. Keys to the storeroom are in the possession of the bar owner, manager, or other designated responsible person only.
- Liquor issued from the storeroom is recorded as it is issued.
- A complete inventory of all bar merchandise is taken at least monthly, and the calculated cost of liquor sold is compared with the desired percentage of cost set as the goal.
- Purchases, as shown on invoices, are posted on an inventory card by brands, and checked off the card when issued to the

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dispensing bars. This provides a perpetual inventory which can be easily verified by frequent counts.

- A bar schedule is established for each bar. This consists of a definite number of bottles of each brand that should be constantly stocked at each bar (such as 4 quarts of Cutty Sark, 12 quarts of Bar Vodka, 1 bottle of Gran Marnier, and so forth).
- All empty bottles are retained at the bar (after cracking the necks). The bar manager, owner, or someone in charge replaces each empty with a full bottle of the same brand out of the storeroom. The empties are then broken and discarded.
- Banquet or service bars that can be locked are handled in a similar manner. The banquet bar, if not locked, is stocked with a scheduled number of bottles of each variety prior to each banquet, and removed thereafter.

### ***Robbery and Theft***

If you have lost merchandise as the result of shoplifting, robbery, or internal theft, it is important that you be able to document those losses if you are audited. Proof may be in the form of a report from a private agency employed to track down losses, a police report, insurance claim, or other documentary evidence.

*Note:* Because sales tax is measured by sales, robberies of cash are not deductible for sales tax purposes. You are required to pay sales tax on taxable sales in the usual manner despite a loss of the proceeds from those sales.

## **Record Keeping**

### ***Don't Mix Bar and Restaurant Receipts and Purchases***

If you operate a restaurant in conjunction with a bar, you should ensure that all purchases and sales for your restaurant operations are segregated in your books and records from your bar operations.

The bar and the restaurant usually have different profit margins. Accurate segregation of sales and costs of goods sold will help you determine whether you are realizing the desired percentage of gross profits. It will also help you detect any leakage or pilferage.

### ***Complimentary Meals and Drinks***

Maintain a record of complimentary merchandise. There are several good reasons for this record keeping:

- Ownership controls over business operations are greatly improved.
- You are considered the consumer rather than the seller for sales and use tax purposes and as a result are liable only for the tax on the cost to you of taxable items that you give away (such as alcoholic beverages and carbonated soft drinks).

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- It supports the amounts reported on returns, thus avoiding the use of estimates.

The types of records you use may vary from memo sales slips prepared at the time of issuance of free meals or drinks, to a record maintained on a daily basis. At the end of the reporting period, the total cost of the taxable items given away is computed and included in the sales and use tax return for that period as self-consumed merchandise. Be sure to keep all records that show your computations.

### *Price Changes and "Happy Hours"*

Be sure to keep evidence of price changes, changes in the size of glasses, sales during "Happy Hours," or other variations from your usual pricing practices.

If your business is audited, the auditor may prepare a "markup test" to determine whether recorded sales are essentially accurate. Price changes and changes in glass sizes may significantly affect the outcome of this test.

The following are suggested methods for documenting price changes:

- *Changes in glass sizes.* Keep dated purchase invoices which indicate the period in which a different glass size was first put into service.
- *Price changes.* Retain old menus, or make a note in the records, showing the price change and date of the change. Cash register tapes or invoices should be retained as supporting documents.
- *Happy Hours.* "Happy Hours" is a period when drinks are sold at lower prices than during normal business hours. Retain menus, "Happy Hour" sale signs, and cash register tapes showing sales made during "Happy Hours." These should be incorporated in your business records.
- *Size of the pour.* Establish the amount of the liquor served in cocktails — both on the stem and on the rocks — as part of your control procedure.

The best time to obtain proof is when the changes are made, not several years later when the auditor is checking your records.



## 5. FOR MORE INFORMATION

### Information Center

If you have a general tax question or would like to order a publication, please call our Information Center and talk to a customer service representative. Representatives are available from 8:00 A.M. to 5:00 P.M., Monday-Friday, excluding State holidays. Please call:

**1-800-400-7115**

For TDD assistance (telephone device for the deaf), please call:

From TDD phones:

1-800-735-2929

From voice phones:

1-800-735-2922

You can also call toll-free to report suspected tax evasion. Call 1-888-334-3300 during working hours to speak to a representative .

### Questions Regarding Your Account

Please call the office that maintains your records and select the Ø voice mail option. The name and telephone number of the appropriate office is printed on your tax returns. Field office telephone numbers are provided on page 16.

### Fax-Back Service

Selected forms and notices are available on our automated fax-back service. Call 1-800-400-7115 at any time and choose the fax option.

### Publications and Regulations

The following regulations and publications may be of interest. To order any of these items, please call our Information Center .

#### ■ Regulations

- 1503 Hospitals, Institutions, Homes for the Care of Persons
- 1597 Property Transferred or Sold by Certain Nonprofit Organizations
- 1602 Food Products
- 1603 Taxable Sales of Food Products
- 1698 Records
- 1700 Reimbursement for Sales Tax
- 1821 Foreword—District Taxes

A complete listing of Board regulations appears in publication 73, *Your California Seller's Permit*.

#### ■ Publications

- 18 *Tax Tips for Nonprofit Organizations*
- 44 *District Taxes*
- 45 *Hospitals*
- 51 *Guide to Board of Equalization Services*
- 61 *Sales and Use Taxes: Exemptions and Exclusions*
- 70 *The California Taxpayer's Bill of Rights*
- 73 *Your California Seller's Permit*
- 74 *Closing Out Your Seller's Permit*

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75 *Interest and Penalty Payments*

76 *Audits and Appeals*

To obtain copies of publications and regulations, you may:

**Call our toll-free number.** Our toll-free number is listed on page 14. If you know the name of the publication, form, or regulation you need, you can call at any time and leave a recorded message. Or, if you call during business hours, you can talk to a representative and leave your request. Certain documents are also available on our fax-back service described on page 14.

**Visit our Internet site.** You can visit our web site to download order forms listing available Board publications, regulations, manuals, and law guides. You can also download selected publications. See "Computer Access" below.

### **Tax Information Bulletin**

As a registered seller, you also receive the quarterly *Tax Information Bulletin*, which includes articles on the application of law to specific types of transactions, announcements regarding new and revised publications, and other articles of interest to sellers. The bulletin is mailed with your sales and use tax return(s). If you file only once a year and would like to receive all four bulletins, please write to the following address and ask to be added to Mailing List #15: State Board of Equalization; Mail Services Unit, MIC:12; Attn: Addressing Systems; P.O. Box 942879; Sacramento, CA 94279-0012.

### **Written Tax Advice**

For your protection, it is best to get tax advice in writing. If you write to the Board for advice regarding the taxability of a transaction and the Board's written reply is incorrect, you may be relieved of tax, penalty, or interest charges. For this relief to apply, a request for advice must be in writing, identify the taxpayer to whom the advice applies, and fully describe the facts and circumstances of the transaction. You should send your request to the Board office that handles your account.

### **Computer Access— World Wide Web**

We maintain a variety of information on our web site, including sales and use tax rates by county, Board field office addresses and telephone numbers, Taxpayers' Bill of Rights Hearings, publication order forms, an agency profile, and Board Member biographies. You can also download copies of selected pamphlets and regulations.

Our address is <http://www.boe.ca.gov>

### **Classes**

You may enroll in a basic sales and use tax class offered by some local Board offices. You should call ahead to find out whether your local office conducts a class for beginning sellers.

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## Taxpayers' Rights Advocate Office

The State Board of Equalization wants to make dealing with us as easy as possible. Consequently, we have appointed a Taxpayers' Rights Advocate to help you with problems you cannot resolve at other levels. You can contact the Advocate's office at:

Taxpayers' Rights Advocate, MIC:70  
State Board of Equalization  
450 N Street  
PO Box 942879  
Sacramento CA 94279-0070

Telephone: 916-324-2798 or 1-888-324-2798  
Fax: 916-323-3319

For a copy of publication 70, *Your California Taxpayers' Bill of Rights*, please call the Information Center at 1-800-400-7115.

Field Offices	City	Area	Number	City	Area	Number
		Code			Code	
	Bakersfield	805	395-2880	San Francisco	415	396-9800
	City of Industry	562	908-5280	San Jose	408	277-1231
	Concord	510	687-6962	San Marcos	760	744-1330
	Culver City	310	342-1000	Santa Ana	714	558-4059
	El Centro	760	352-3431	Santa Rosa	707	576-2100
	Eureka	707	445-6500	Stockton	209	948-7720
	Fresno	209	248-4219	Suisun City	707	428-2041
	Laguna Hills	714	461-5711	Torrance	310	516-4300
	Norwalk	562	466-1694	Van Nuys	818	904-2300
	Oakland	510	286-0347	Ventura	805	677-2700
	Rancho Mirage	760	346-8096	<b>Offices for Out-of-State Accounts</b>		
	Redding	916	224-4729	Chicago, IL	312	201-5300
	Riverside	909	680-6400	Houston, TX	281	531-3450
	Sacramento	916	255-3350	New York, NY	212	697-4680
	Salinas	408	443-3008	Sacramento, CA	916	322-2010
	San Diego	619	525-4526			

## 6. APPENDIX

### A Test for the 80/80 Rule

As noted in the first chapter, you are required to report tax under the 80/80 rule if:

- More than 80 percent of your gross receipts come from the sale of food products \* *and*
- More than 80 percent of your retail food product sales would normally be taxable (for example, food products served as meals; sold for consumption at facilities you provide; sold as hot prepared foods; or sold at an establishment defined as a drive-in).

It may be readily apparent that you qualify (most fast food restaurants qualify, for example). In other instances, it may be necessary to evaluate your sales more closely to determine whether you qualify. The following table provides an example of how to make that evaluation.

If you do qualify, you must begin immediately to report tax as explained on page 2, "How To Report Tax Under the 80/80 Rule."

If you *do not* qualify at this time, you should monitor your sales and at the end of every 90 days reevaluate your sales to determine whether your status has changed. You should retain the records of your 90-day tests. In the event of an audit, you may need to provide proof that you do not qualify under the 80/80 rule.

90-Day Test	Food Sales		Total		Total Sales
	Taxable	Nontaxable	Food Sales	Nonfood Sales	
Hot Prepared Food Products	\$85,000				
Cold Food Products (for example, cold salad, milk) <i>Sold to-go</i> <i>Sold for consumption on the seller's premises</i>	4,000	\$5,000			
Nonfood Items (for example, carbonated and alcoholic beverages, cigarettes, souvenirs)				\$6,000	
<b>TOTAL</b>	<b>\$89,000</b>	<b>\$5,000</b>	<b>\$94,000</b>	<b>\$6,000</b>	<b>\$100,000</b>

In the above example, over 80 percent of the retailer's sales are food sales ( $\$94,000 \div \$100,000 = 94\%$ ), and over 80 percent of food sales are taxable ( $\$89,000 \div \$94,000 = 95\%$ ). Therefore, all food sold in a form suitable for consumption on the seller's premises is subject to tax.

When evaluating sales under the 80/80 rule, each location must be considered separately. (A combination location such as a bakery-restaurant or food court location may be considered one operation for purposes of the above calculation even though the sales are segregated in the books and records.)

*\* Do not include alcoholic and carbonated beverages as part of your food product sales. Although subject to tax, they are not considered food products.*

## *What do you think of this pamphlet?*

We hope that this newly revised tax tip pamphlet will help you to better understand the Sales and Use Tax Law as it applies to your business.

We would appreciate it if you could take a few minutes to give us your comments and suggestions for this pamphlet, so that we can improve future revisions. We'd also like to have some information that will help us make our publications program more useful to you. Please answer the questions below and on the reverse, remove the page, and return it to us. It is designed as a postage-paid self-mailer: you may fold the page as indicated and seal it with two pieces of tape.

Thank you for taking the time to respond to this survey.

### **✎ Pamphlet Comments and Suggestions**

1. Does this pamphlet help you apply the sales and use tax in your business operations?
2. Are there any sections of the pamphlet that you find particularly helpful? (please note)
3. Are there any sections of the pamphlet that you find confusing? (please explain, if possible)
4. Are there any topics not addressed in this pamphlet that you would like us to include?
5. Are there any sections of the pamphlet that you feel are incomplete? What would you add to them?
6. Do you have any other comments or suggestions for improving this pamphlet?

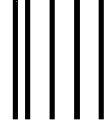
*Please answer questions on reverse.*

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Sacramento, CA 94279-0058



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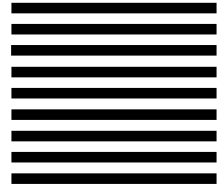
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### **Reader Survey Information** *(please check all boxes that apply)*

What is the nature of your business?

How long have you been in business?

- ☐ less than one year    ☐ 1-5 years  
☐ 6-10 years    ☐ more than 10 years

Did you receive a copy of this pamphlet (or an earlier version) when you applied for or received your seller's permit?

- ☐ yes    ☐ no    ☐ not sure

How did you find out about this pamphlet?

- ☐ Board field office  
☐ Board auditor  
☐ Tax Information Bulletin  
☐ Publications listing in a Board pamphlet  
☐ Other (please list) \_\_\_\_\_

Where did you obtain this pamphlet?

- ☐ Board field office  
☐ Board auditor  
☐ Board Supply Unit  
☐ Information Center  
☐ Other (please list) \_\_\_\_\_

Do you use any other Board publications to help you apply or understand the California Sales and Use Tax Law? (please list) \_\_\_\_\_

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